

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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|-----------------------------|---|-----------|
| BPP, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Cause No. |
| |) | |
| BRASSELER USA, INC. and |) | |
| ENDODONTIC EDUCATIONAL |) | |
| SEMINARS, L.L.C. d/b/a REAL |) | |
| WORLD ENDO |) | |
| |) | |
| Defendants. |) | |

NOTICE OF REMOVAL

Defendant Brasseler USA, Inc. (“Brasseler”), by its undersigned counsel, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, hereby removes the state court civil action known as *BPP v. Brasseler USA, Inc. and Endodontic Educational Seminars, L.L.C. d/b/a Real World Endo* from the Circuit Court of St. Charles County, Missouri (Cause No. 1611-CC01160), to the United States District Court for the Eastern District of Missouri, Eastern Division, and states as follows:

Introduction

1. On December 1, 2016, Plaintiff BPP (“BPP”) mailed two copies of the notice and acknowledgement, along with the summons and petition, pursuant to Missouri Supreme Court Rule 54.16, to Brasseler. The Petition was originally filed in the Circuit Court of St. Charles County, Missouri on November 30, 2016. A copy of the state court file is attached hereto as Exhibit A; a Civil Cover Sheet is attached as Exhibit B.

2. On December 8, 2016, Brasseler received the Petition at its offices in Savannah, Georgia via regular U.S. mail. The Petition was received by Brasseler’s mail room and delivered to Brasseler’s chief executive officer via his executive assistant on December 8, 2016.

3. On December 22, 2016, Brasseler signed and returned the acknowledgement of service.

4. As set forth more fully below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because Brasseler has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

Grounds for Removal

I. Brasseler Has Satisfied the Procedural Requirements for Removal.

5. As indicated above, Brasseler was served with the Petition on December 8, 2016 when the notice, acknowledgement form, summons, and petition were received at Brasseler's corporate offices. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b) because Brasseler is filing it within 30 days of its receipt of the initial pleading setting forth the claim for relief upon which such action is based, and within 30 days after service of process was achieved on Brasseler.

6. Venue is proper in this division of the Court because this division embraces St. Charles County, Missouri, where BPP's action was filed. See 28 U.S.C. §§ 1441 and 1446(a).

7. This matter involves an original proceeding as reflected on the Original Filing Form attached hereto as Exhibit C.

8. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal, together with all exhibits, is being served on BPP's counsel; in addition, a Notice to Plaintiff and to State Court of Filing Notice of Removal will be electronically filed in the Circuit Court of St. Charles County, Missouri, attaching the Notice of Removal as an exhibit. A copy of the Notice to Plaintiff and to State Court of Filing Notice of Removal that will be electronically filed in the Circuit Court of St. Charles County, Missouri is attached hereto as Exhibit D.

9. After the Notice to Plaintiff and to State Court of Filing Notice of Removal is officially deemed “ACCEPTED” by the state court clerk (a process that is sometimes delayed by one or more business days), a copy of the Notice to Plaintiff and to State Court of Filing Notice of Removal showing the electronic file-stamp will be filed in this Court, without the exhibit.

II. Removal Is Proper Because This Court Has Subject Matter Jurisdiction.

10. United States District Courts are vested with jurisdiction to consider cases or controversies “arising under” the laws of the United States of America. *See* 28 U.S.C. § 1331.

11. Removal of such cases is governed by 28 U.S.C. § 1441(a). Section 1441(a) provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” *See* 28 U.S.C. § 1441(a).

12. Here, BPP’s Petition purports to assert a claim against Brasseler for alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”). *See* Petition, p. 1.

13. Because BPP’s Petition alleges violations of a federal statute—the TCPA—BPP’s claims “arise[] under” the laws of the United States. *See* 28 U.S.C. § 1331. Therefore, this Court may properly exercise jurisdiction over BPP’s TCPA claim.

14. Because the requirements for federal question jurisdiction are satisfied, this Court has subject matter jurisdiction and this case is properly removed.

15. A corporate disclosure statement will be separately filed.

III. Co-Defendant Endodontic Educational Seminars, L.L.C. d/b/a Real World Endo Consents to the Removal of this Action

16. Co-Defendant Endodontic Educational Seminars, L.L.C. d/b/a Real World Endo consents to Defendant Brasseler USA, Inc.'s removal of this action as reflected in the Consent to Removal attached hereto as Exhibit E.

WHEREFORE, Defendant Brasseler hereby removes the state court civil action known as *BPP v. Brasseler USA, Inc. and Endodontic Educational Seminars, L.L.C. d/b/a Real World Endo* from the Circuit Court of St. Charles County, Missouri (Cause No. 1611-CC01160), to the United States District Court for the Eastern District of Missouri, Eastern Division, and respectfully requests that this Court retain jurisdiction for all further proceedings in this matter.

SANDBERG PHOENIX & von GONTARD P.C.

/s/ Timothy C. Sansone

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Attorneys for Defendant Brasseler USA, Inc.

Certificate of Service

I certify that on January 5, 2017, a copy of this document was filed electronically with the Clerk of this Court; in addition, a copy was sent by via first-class U.S. Mail, postage prepaid, to the following counsel:

Ronald Jay Eisenberg, Esq.
640 Cepi Drive Suite A
Chesterfield, MO 63005

/s/ Timothy C. Sansone